



OFFICE OF HISTORIC PRESERVATION

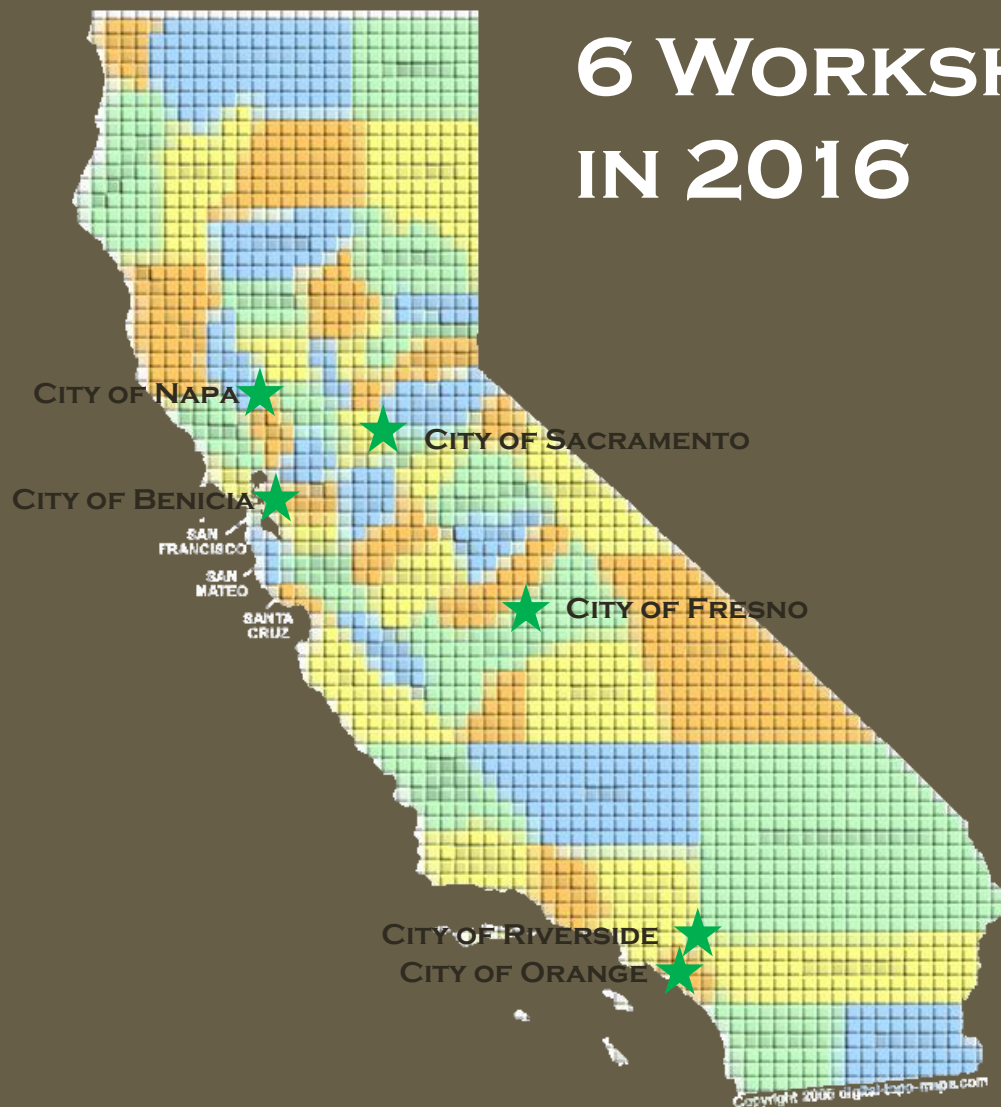
**1725 23RD STREET, SUITE 100
SACRAMENTO, CA 95816
WWW.OHP.PARKS.CA.GOV**



Riverside County Courthouse

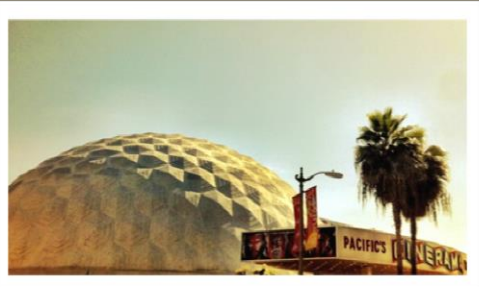
OFFICE OF HISTORIC PRESERVATION LOCAL GOVERNMENT PRESERVATION WORKSHOP SERIES

6 WORKSHOPS IN 2016



Know the Rules

- All trainers are glad to answer questions during our presentations, but please raise your hands.
- We will have some time at the end of the workshop to answer general questions, so please write down any questions you think might be best answered at the end.
- Important: Please do not use examples from current project or contentious preservation issues in your community. Historic Preservation can be a sensitive subject so please be respectful of all points of view.



CEQA + Historical Resources

@work

Sean de Courcy, State Historian

Training Objectives

- Understanding the CEQA process
- Understanding how historical resources fit into CEQA
- Examine case studies of CEQA projects to learn how historical resources integrate with local decision making



What Can Local Governments do Before CEQA is Triggered?

- Incorporate historic resource survey into your landuse planning documents, or the EIRs that accompany planning documents (Specific Plans, Master Plans, Subdivision Maps)
- Draft an effective Historic Preservation Ordinance & Resources Element for your General Plan
- Incentivize property owners to list resources on the local register

Proactive identification reduces risk that the CEQA Lead Agency will *abuse its discretion* in determining if a resource is historical.

What is CEQA?

- *California Environmental Quality Act*: Is a state law that applies to discretionary actions by California agencies (state, regional, local):
 - Thousands of “projects” each year
 - Not all require an Environmental Impact Report (EIR)
- CEQA requires disclosure of potential significant impacts of an action before approval
- CEQA requires mitigation of any significant impacts
- CEQA itself is not a permit – it neither approves nor denies a project

CEQA's Primary Objectives

- Disclose to decision makers and public significant environmental effects of proposed activities
- Identify ways to avoid or reduce environmental damage
- Prevent environmental damage by requiring implementation of feasible alternatives or mitigation
- Disclose to public reasons for agency approval of projects with significant environmental effects
- Foster interagency coordination in project review
- Enhance public participation in the planning process

Who's Responsible for CEQA?

- California public agencies:
 - Doesn't apply to federal agencies or Native American tribes
- The agency undertaking or responsible for approving the project is the “lead agency” under CEQA:
 - CEQA applies to “discretionary” actions by public agencies
 - Ministerial actions are not subject to CEQA
- The lead agency determines the appropriate level of review
 - Exempt?
 - Negative Declaration or Mitigated Negative Declaration?
 - EIR?

CEQA Limits

- CEQA requires identification and mitigation of potential significant effects, *but it doesn't stop a project*
 - With an EIR, a project may be approved even if it has significant, unavoidable impacts
- CEQA informs decision makers - it doesn't require them to make "good" decisions
- CEQA requires mitigation when feasible - it doesn't give the Lead Agency any new powers to do so
- Mitigation is limited by U.S. Constitution:
 - "Nexus" linking the impact to need for mitigation must exist
 - Project mitigation must be "roughly proportional" to its impact (i.e., fair share of total impact)

Key Participants



Does CEQA apply?

- Is there a Project for CEQA purposes?
 - “Projects” covered by CEQA include any activity carried out, approved, or funded by a California public agency that may result in an ***adverse physical change*** in the environment, either directly or indirectly.
- If there isn’t a “project,” then CEQA doesn’t apply
 - CEQA does not apply to “ministerial” projects
- Minor projects may be exempt from CEQA – more about that in a minute

Discretionary vs. Ministerial

- Ministerial: Little personal judgment; use of fixed or objective standards
 - Example: building permit
- Discretionary: Requires exercise of judgment or deliberation
 - Examples: conditional use permit, subdivision map
- Mixed Projects: Considered discretionary
 - Example: conditional use permit and building permit required



What if a Ministerial Project has the potential to impact a historical resource?

This situation is often outside the bounds of the CEQA process. Lead Agencies must grant themselves the ability to exercise discretion over certain types of projects (i.e. consider whether or not to approve a demolition permit based on the building's age, or historical designation).

The mere presence of protected classes of resources (historical or natural) itself will not make a project discretionary.



Type of Document Will Determine the Level of Analysis

Discretionary Project

Project is Exempt



No Review under CEQA
NOE Filed



No public comment period
35-day SOL

Initial Study



Checklist & Discussion
Determines MND or EIR



NOP circulated for public comments to stakeholders

ND or MND



All impacts can be mitigated to a *level of insignificance*



30-days
OR
90-days

Significant Impacts

EIR



Highest Level of Environmental Review



30-Day Comment Period

Significant Impacts

Is the Project Exempt from CEQA?

Statutory Exemptions:

- Ministerial projects
- Emergency projects, for example
- Some require limited environmental review

Categorical Exemptions:

- 33 “classes” established by the CEQA Guidelines
- Section 15300.2 exceptions
- There are no “mitigated” exemptions
- Filing Notice of Exemption

Categorical Exemptions (Cat Ex)

- Established by State CEQA Guidelines
- Project must fit within one of the 33 classes of exemption
- A project consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties is exempt
- A project subject to *unusual circumstances* that indicate it may result in a significant impact doesn't qualify for exemption
- Categorical exemptions are not subject to public review and comment:
 - However, like any other part of CEQA, they are subject to legal challenge
 - With a local project, the city/county hearing notice will state whether the project is subject to a CE, ND, MND, or EIR

A Cat Ex Does Not Apply When:

1. The project site is environmentally sensitive
2. Cumulative impacts would be significant
3. Environmental impacts due to unusual circumstances
4. Cumulative impacts would be significant
5. Environmental impacts due to unusual circumstances
6. Damage to scenic resources within an officially designated scenic highway
7. Located on a designated site affected by hazardous waste or clean-up problems
8. Impacts to historical resources will occur

When does a Cat Ex Not Apply?

When a project may cause a substantial adverse change in the significance of a historical resource, as determined by the lead agency

Determination must be based on *substantial evidence*.



CEQA Guidelines Section 15300.2(f)

When a Project is Exempt from CEQA

- State agency files with Office of Planning and Research (OPR)
- Local agency files with county clerk in the county(ies) where the project is located
- Filing of NOE starts 35 day statute of limitations

Print Form

Notice of Exemption **Appendix E**

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

From: (Public Agency): _____

(Address)

County Clerk
County of: _____

Project Title: _____

Project Applicant: _____

Project Location - Specific: _____

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project: _____

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: (check one):
☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☐ Categorical Exemption. State type and section number: _____
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt: _____

Lead Agency
Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: _____

☐ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code. Date Received for filing at OPR: _____
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Revised 2011

Is the project being segmented?

- Environmental document must include the “whole of an action”
- No piecemealing or segmenting part of the project to avoid review, or defer review.



CEQA Statute Section 21065

Initial Study

If the project is not exempt, an Initial Study is prepared to determine whether to prepare ND, MND, or EIR:

- It documents the determination
- Includes initial Study Checklist (Appendix G of the CEQA Guidelines)
- Includes pertinent technical studies: archaeo survey, historical buildings evaluation, biological surveys, etc.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Prepare a Neg Dec Or EIR

- Negative Declaration, Mitigated ND, or EIR process must be completed before decision makers may approve a project
- The decision makers must consider the comments received during the CEQA document's review period
- All feasible mitigation measures must be made a part of project approval.
- A EIR will propose alternatives to the proposed project while a Neg Dec or Mitigated ND will not.
- EIRs are expensive both in terms of time to prepare and cost of preparation. It may be less expensive to avoid impacts (ND MND) than to prepare an EIR (this will not apply to large projects).

How to Provide Effective CEQA Comments

- Comments should focus on sufficiency of document regarding
- identification of impacts and
 - present feasible methods to avoid or mitigate impacts.



Fair Argument & Substantial Evidence

An EIR must be prepared when:

- It can be *fairly argued* based on *substantial evidence* that the proposed project may have a significant impact.
- The “Fair Argument Standard” is met if *substantial evidence* supporting a *fair argument* that the proposed project may have a significant adverse effect on the environment.

CEQA Defines Substantial Evidence

Substantial evidence includes:

- Facts
- Reasonable assumptions predicated upon facts, and
- Expert opinion supported by facts

Is the Resource Historical for the Purposes of CEQA?

Valley Advocates v. City of Fresno (2008)

Mandatory: A resource listed in, or determined by the State Historical Resources Commission as eligible for listing in, the California Register of Historical Resources (§ 15064.1.a.1);

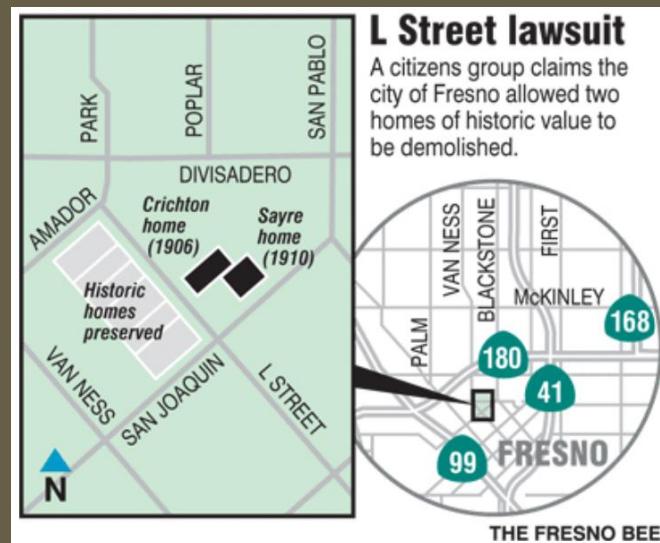
Presumptive: A resource included in a local register of historical resources or identified as significant in an historical resources survey (§ 15064.1.a.2);

Discretionary: A Lead Agency determines that a resource meets the criteria for listing in the California Register of Historical Resources (§ 15064.1.a.3); or the Lead Agency uses its discretion to consider any resource as historic for the purposes of CEQA (§ 15064.1.a.4).

Fair Argument or Substantial Evidence?

Citizens for the Restoration of L Street v. City of Fresno (2014)

The Substantial evidence test, rather than the fair argument standard, applies to a lead agency's discretionary determination of whether a building or district is an historical resource for purposes of CEQA.



Need an Expert Opinion?

Sometimes it may be best to hire an expert to evaluate the resources to gather substantial evidence based on facts.

When bringing in someone to buttress your point, **an authority with recognizable credentials**, the Expert, should be substantiating your points.



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When are Impacts Significant?

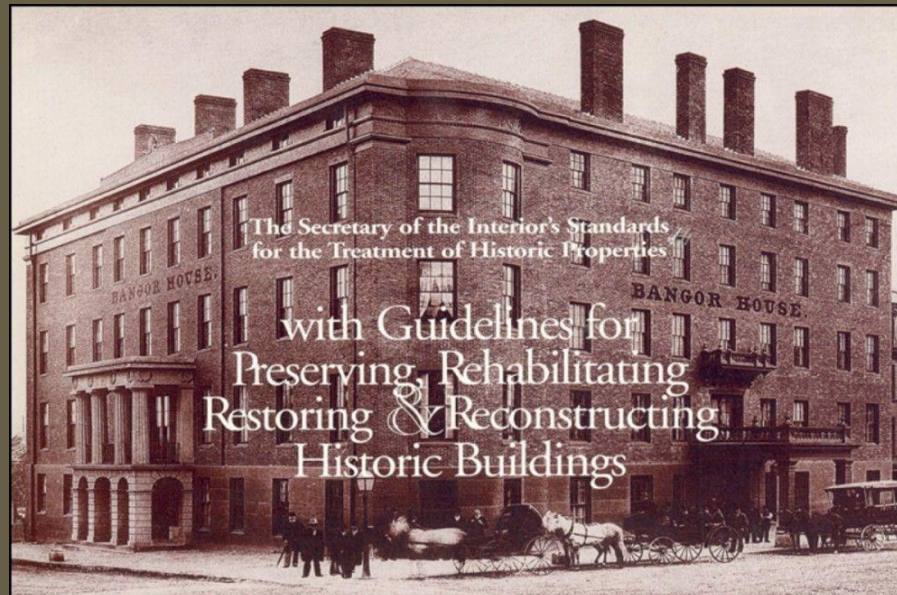
Substantial adverse change to the significance of an historical resource means

- physical demolition,
- destruction,
- relocation, or
- alteration of the resource
- or its immediate surroundings
- such that the significance of an historical resource would be materially impaired.



Is the Impact Mitigated to a level that is Less than Significant?

Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties ... shall be considered as mitigated to a level of **less than significant impact** on the historic resource.



CEQA Guidelines Section 15064.5.3

Want to learn more about the SOI Standards? Watch OHP's eLearning:
http://www.ohp.parks.ca.gov/?page_id=27295

Mitigation Measures

Architectural Heritage Association v. County of Monterey (2004):

“As drawing chalk mark around a dead body is not mitigation, so archival documentation cannot normally reduce destruction of an historic resource to an insignificant level.”



CEQA Guidelines Section 15126.4

Also See: *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997)*

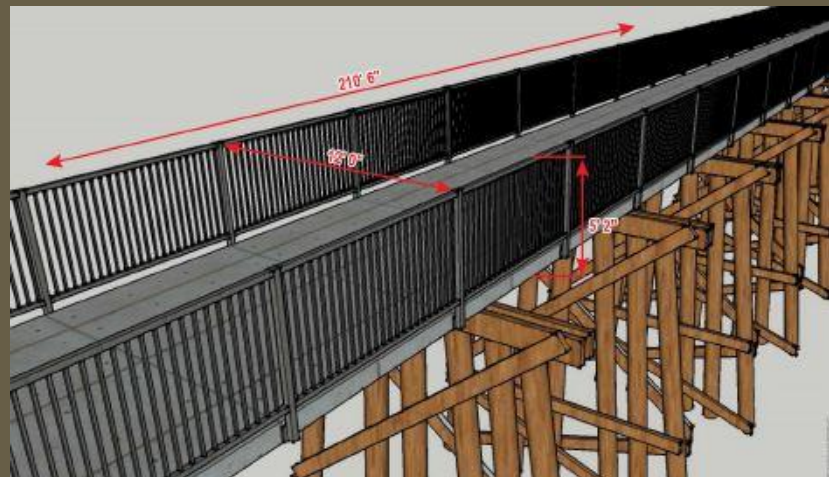
Alternatives

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives (§ 15126.6)

Some common alternatives:

- Rehabilitation
(Preservation)
- Adaptive Reuse
- Off Site
- Alternative Use
- Reduced Density
- Avoidance Alternative

Bridge Retrofit Alternative



CEQA Guidelines Section 15126.6

Suggest a range of alternatives during the NOP comment period. If you wait until the DEIR, it will likely be too late for alternatives to be considered.

Statement of Overriding Consideration

When a Lead Agency approves a project with significant environmental impacts, the agency shall state in writing the specific reasons to support its action. The statement of overriding consideration shall be supported by substantial evidence in the record.



Advocacy or Anger?

Comments on CEQA documents should address the document and its adequacy for compliance with CEQA.

- Introduce yourself and/or the group you represent
- Maintain a professional tone throughout your comments
- Be helpful, suggest creative mitigation ways to avoid impacts
- Stay Organized: Use Bullet points or subject headings if the comments are extensive
- Cite the sections of the Statue and Guidelines as applicable to support your points
- Present evidence based on facts



Have Further Questions?

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**LOS ANGELES
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